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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 9th March, 1984:—

BILL NO. III OF 1984

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1984. Short title.

2. In article 123 of the Constitution,— Amendment of article 123.

(*a*) for clause (*1*) the following clause shall be substituted, namely:—

"(1) If at any time except when both Houses of Parliament are in Session, or when the President has already summoned each House of Parliament to meet at a particular time and place, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require."

(*b*) after clause (*1*), the following provisos shall be inserted, namely:—

"Provided that no Ordinance shall be promulgated by the President on a subject on which an Ordinance has previously

been promulgated by him and a period of three years has not elapsed since the date of promulgation of the earlier Ordinance:

Provided further that if any Ordinance is promulgated in contravention of the provisions of this clause, it shall be void."

Substitution of article 197

3. For article 197 of the Constitution, the following article shall be substituted, namely:—

Joint Sitting of both Houses of a State Legislature in certain cases.

"197. (*1*) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(*a*) the Bill is rejected by the Council; or

(*b*) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(*c*) the Houses have finally disagreed as to the amendments to be made in the Bill, the Governor may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(*2*) In reckoning any such period of three months as is referred to in clause (*1*) no account shall be taken of any period during which the House referred to in sub-clause (b) of that clause is prorogued or adjourned for more than four consecutive days.

(*3*) Where the Governor has under clause (*1*) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the Governor may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting;

(*a*) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(*b*) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the decision of the

person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the Legislative Assembly has intervened since the Governor notified his intention to summon the Houses to meet therein."

Amendment of article 208.

4. In article 208 of the Constitution,—

(*a*) for clause (*3*), the following clause shall be substituted, namely:—

"(*3*) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to joint sitting of, and communications between, the two Houses.

(*b*) after clause (*3*), the following clause shall be inserted, namely:—

"(*4*) At a joint sitting of the two Houses the Speaker of the Legislative Assembly, or in his absence such person as may be determined by rules of procedure made under clause (*3*), shall preside.

Amendment of article 213.

5. In article 213 of the Constitution,—

(*a*) for clause (*1*) the following clause shall be substituted, namely:—

"(*1*) If at any time except when both Houses of the Legislature of a State are in session, or when the Governor has already summoned each House of the State Legislature to meet at a particular time and place, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:"

(b) after clause (*1*), the following provisos shall be inserted, namely:—

"Provided that no Ordinance shall be promulgated by the Governor on a subject on which an Ordinance has previously been promulgated by him and a period of three years has not elapsed since the date of promulgation of the earlier Ordinance:

Provided further that if any Ordinance is promulgated in contravention of the provisions of this clause, it shall be void."

STATEMENT OF OBJECTS AND REASONS

The extraordinary power of issuing Ordinances was included in the Constitution to meet the extraordinary situations and the power was to be exercised sparingly. Now-a-days, the power to promulgate Ordinances under article 123 and under article 213 is used frequently and many times for political purposes. The tendency in this respect to avoid Parliamentary Institutions is on the increase. In some States, like Bihar, the administration is carried on by issuing Ordinances without making a reference of them to the State Legislature. In some other States also the same course is being followed, particularly when there is no majority for the ruling party in the Legislative Council. In the judgement in 1981, in the case of *A. K. Roy* vs *the Union of India and others*, the Supreme Court has observed as follows:—

> "One of the larger States in India has manifested its addiction to that power by making an overgenerous use of it. The use of Ordinance making was so generous indeed, that Ordinances which lapsed by efflux of time were renewed successively by a chain of kindred creatures one after another and the Ordinances embrace anything under the sun, from prince to pauper, and from crimes to contract. The Constituent Assembly conferred upon the executive the power to legislate not, of course, intending that the said power should be used recklessly or imagining a state of affairs to exist which, in fact, did not exist nor indeed did it intend that it should be used *malafide* in order to prevent people's elected representatives from passing or rejecting a Bill after a free and open discussion, which is of the essence of the democratic process. The debates of the Constitutent Assembly would show that the power to issue Ordinances was regarded as a necessary evil." It has further observed "....That power was to be used to meet the extraordinary situation and not perverted to serve political ends. The Constituent Assembly held forth, as it were, an assurance to the people that an extraordinary power shall not be used in order to perpetuate the fraud on the Constitution which is conceived with so much faith and vision."

Thus it has become necessary to restrict the power of issuing Ordinances and to curb the tendency of various Governments and ruling parties to issue Ordinances in and out of season, a method which is constitutionally immoral and politically an abuse of power. It is necessary to restrict the power of the President and the Governor of a State so that the Ordinances are not issued when the Houses of Parliament or of a State Legislature are already summoned and on the same subject as that of an earlier Ordinance within three years of the issuance of that Ordinance.

The Constitution of India provides for a Parliament consisting of two Houses. There are similar provisions in respect of the State Legislatures under article 168. In the States of Andhra Pradesh, Bihar, Jammu and Kashmir, Tamil Nadu, Maharashtra, Karnataka and Uttar Pradesh, there are two Houses. In the Legislatures of the other States there is only one House.

For the passing of Bills in Parliament the procedure has been provided in article 107. So far as the States are concerned the procedure is given in article 197. In the case of Parliament when the Houses have finally disagreed as to the amendments to be made in a Bill, provision has been made under article 108 for a joint sitting of both Houses, but, unfortunately, there, is no similar provision in respect of the State Legislatures having a Legislative Council for the joint sitting of both Houses. Moreover, the procedure given therein is time consuming and clumsy. It is necessary that equal status is provided to the Legislative Council by providing for a joint sitting in the case of a State Legislature also.

This Bill seeks to achieve these objects.

S. W. DHABE

SUDARSHAN AGARWAL,
Secretary-General.

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